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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/606,131      Confirmation No.: 4021  
Applicant(s): Doe, Steve  
Filed: 06/24/2003  
Art Unit: 2871  
Examiner: Wang, George Y.  
Title: Display Device  
Attorney Docket No.: 884A.0005.U1 (US)  
Customer No.: 29,683

Commissioner For Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Response To Restriction

Sir:

This is in response to the restriction Office Action mailed 08/18/2004 in regard to the above-identified patent application. Applicant's attorney here elects Group I (claims 1-20 and 23-24) and the species 1 (claims 1-20) with traverse.

Applicant's attorney requests that the examiner reconsider his restriction between the alleged three species (1, 2 and 3). The three independent claims 1, 23 and 24 merely have variations of the non-transparent state being a reflective state or a selectively emissive state. The examiner's attention is directed to MPEP §806.03 which states that:

"Where the claims of an application define the same essential characteristics of a single disclosed embodiment of an invention, restriction therebetween should never be required. This is because the claims are but different definitions of the same disclosed subject matter, varying in breadth or scope of definition."

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In the present case it does not appear that claims 1, 23 and 24 would be classified in different subclasses.

Claims 1, 23 and 24 vary in scope, but they all relate to the single embodiment shown in Fig. 3 or the single embodiment shown in Fig. 4. Thus, claims 1, 23 and 24 are but different definitions of the same disclosed subject matter, varying in breadth or scope of definition. Since the examiner must conduct a search and examine claim 1 (reflective state or a selectively emissive state), there appears to be no justifiable reason why the examiner should not also review claim 23 (reflective state) or claim 24 (selectively emissive state). The examiner is requested to reconsider his restriction. If the examiner continues his species restriction, he is requested to specifically cite a section of the MPEP which the examiner is relying on for justification of the alleged species restriction.

For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issue remain, the examiner is invited to call applicant's attorney at the telephone number indicated below.

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Respectfully submitted,

Mark F. Harrington

9/16/04

Mark F. Harrington (Reg. No. 31,686)

Date

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CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

9/16/2004  
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Elaine F. Mason  
Name of Person Making Deposit

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